IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1028 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARBHAI AKHAMBHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Appellants No. 1,3
THROUGH JAIL for Appellant No. 1
MR YATIN SONI for Appellants No. 2,2,4-4
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 19/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellants were the original accused in Sessions Case No.8 of 1993 before the learned Additional Sessions Judge, Panchmahals, Godhra. The learned Sessions Judge found the appellants no.1 and 2 guilty of the offence punishable under Section 302 of the I.P.C., appellants no.3 and 4 of the offence punishable under Section 302 read with Section 34 of the I.P.C., all the appellants of the offence punishable under Section 201 of the I.P.C. and Section 506(2) read with Section 34 of the I.P.C.. The appellants were awarded life sentence for the offence under Section 302 and term sentences for the other offences. The sentences awarded for different offences were ordered to run concurrently.

2. The charge against the appellants was that at about 7.30 in the evening on 22nd September, 1992, they called Bai Jasi to a field known as Kyarda's field, Village Bhatha, Taluka Godhra and the appellants no.3 and 4 caught hold of Bai Jasi and the appellants no.1 and 2 gave kick blows to her in the abdomen and on the back which resulted in her death. At that time, they also gave threats to kill to Bai Resham Shiva and Lila Deva who saw them hitting Bai Jasi. It was also alleged that thereafter, they threw the dead body of Bai Jasi into the well of Vajesingh Dana and attempted to cause disappearance of the evidence.

3. According to the prosecution story, Kalubhai Ratnabhai Baria (P.W.6) went to the Police Station, Morva and lodged a report at about 1.15 on 25th September, 1992. Kalubhai was the father-in-law of Bai Jasi. It appears that 25th September, 1992 was a Friday. According to the report made by Kalubhai, he and his wife had gone to village Mekhar on Tuesday and they stayed the night there. In the morning, his daughter Shanta came and told him that Bai Jasi was missing and they were called home. They, therefore, returned. After narrating what enquiries he had made for tracing Jasi, he stated that on Thursday morning, one Shankarabhai came and told him that the dead body of Bai Jasi was floating in the disused well of Vajesingh Baria. They went there and saw the dead body floating in the well. He had, therefore, gone to lodge the report and stated that for some unknown reasons Bai Jasi had left home and fallen into the well and died.

4. The Head Constable Balwantsingh Roopsingh (P.W.4) proceeded to village Bhatha. After arriving at the

village, he held inquest and sent for the doctor to come to the spot for carrying out post-mortem. The evidence of Dr. G.D. Rohit (P.W.1) shows that he went to the place where the dead body was lying at about 2.30 in the afternoon and started post-mortem. The dead body was swollen and in a highly decomposed state. The spleen was found ruptured and, according to his opinion, the cause of death was intra-abdominal haemorrhage due to rupture of the spleen. He also said in his evidence that if kicks are given in the abdomen, such internal injury was possible. From the medical evidence it was, therefore, very clear that it was not a case of suicide and there was no doubt that Bai Jasi had been given blows in the abdomen which resulted in the rupture of her spleen and she died because of haemorrhage due to rupture of the spleen. The police, therefore, rightly did not take the report of Kalubhai at its face value and started further investigation. In the course of investigation, Reshamben Shivabhai and Lilaben Devabhai implicated all the four appellants in the commission of the offence. The appellants, therefore, came to be arrested and they were chargesheeted after completion of the investigation. At the end of the trial, the learned Additional Sessions Judge found the appellants guilty of the offences as stated earlier and sentenced them accordingly. All the appellants have filed this joint appeal challenging their conviction and sentence. The learned advocate Shri P.M. Vyas was appointed to appear for appellants no.1 and 3. The appellants no.2 and 4 engaged advocate Shri Yatin Soni but he has not remained present. However, the evidence against all the appellants is common and we have heard Shri P.M. Vyas fully on behalf of all the appellants.

5. The learned Additional Sessions Judge mainly relied on the evidence of the two eye-witnesses, namely, P.W.2 Reshamben Shivabhai and P.W.3 Lilaben Devabhai. Reshamben's evidence shows that she has four brothers-in-law (brothers of the husband). Manabhai was one of them. Jasiben was Manabhai's wife. She was staying with her husband separately from her father-in-law. Similarly, Manabhai too stayed separately from his father. The other brothers-in-law stayed with her parents-in-law. They all lived in the same neighbourhood. She said that she knew Narvat Rumal, the appellant no.2. When the incident occurred, her husband was away to another village and so was the husband of Bai Jasi. Her father-in-law and her mother-in-law had gone to village Mekhar. She and her sister-in-law Bai Lila were at home. At about 8.30 in the night, Jasi's daughter Leela started crying. She and her sister-in-law

Lila, therefore, went to Jasi's place. She was not at home. At that time, they heard cries from behind the house of Bai Jasi who was shouting "save me". They, therefore, went running there. At that time, they saw Narvat Rumal, the appellant no.2 and Shankar Akham, the appellant no.1 giving kick blows to Bai Jasi in the abdomen and Jasi's hands had been held by the other two appellants. When they remonstrated with the appellants, the appellants no.1 and 2 threatened to kill them alongwith Jasi in case they did not go away. They also threatened to kill them if they told anyone about the incident. Since there were no male members at home, they did not tell anyone out of fear. Next day, when her father-in-law and mother-in-law returned, Bai Resham told them about the incident. After that Bai Jasi was not traceable and her dead body was found in a well after about four days. She said that Narvat had an affair with Bai Jasi but Bai Jasi was refusing to continue the affair. According to her, they had tried to report the incident but since they were being shadowed by the appellants, they could not tell anyone else.

6. Bai Lila who is the sister-in-law of Bai Resham has also more or less told the same story in her evidence.

7. The learned Sessions Judge has believed the evidence of these two witnesses and found the appellants guilty of the offences as stated earlier.

8. The learned Sessions Judge has also dealt with all the criticisms which could be made of the evidence of these two witnesses. The main criticism made by the learned counsel for the appellants is that the conduct of these two eye-witnesses is not natural and that since they did not report this incident to anyone for several days, their evidence cannot be believed. However, the parties belong to a tribal community living in a very remote village in a backward area, far away from urban centres. They have their own conventions, customs, mores and norms of behaviour and it will not be fair to judge their conduct by reference to standards which would be applicable in the case of city dwellers. It is a matter of common knowledge that when such incidents happen in a tribal community, an attempt is made to resolve the dispute in the community itself. It is obvious from the report made by Kalubhai that such an attempt was made, but, when the medical evidence revealed that the death could not be passed off as a suicidal death and there was no doubt that Bai Jasi had died a homicidal death and the police persisted with the investigation, Bai Reshamben

and Bai Lila ultimately told the truth. It is argued that at the most the appellant no.2, with whom Bai Jasi refused to continue the affair, might have some reason to kill her but the other appellants had no reason to be involved. However, we have read the evidence of the two witnesses very closely. They have told the story in a very natural manner and we see no reason to disbelieve and discard their evidence. They have no reason to implicate the appellants falsely. Once their evidence is believed, the role played by each of the appellants is very clear. The appellants no.1 and 2 gave kick blows to Bai Jasi in the abdomen and caused the rupture of her spleen resulting in internal haemorrhage and her death. The appellants no.1 and 2 have, therefore, rightly been convicted of the offence punishable under Section 302 of the I.P.C. As far as appellants no.3 and 4 are concerned, it is established on the evidence of Bai Reshamben and Bai Lilaben that they caught hold of Bai Jasi while appellants no.1 and 2 were giving blows. The only inference is that they had common intention to cause her death. They have, therefore, rightly been convicted of the offence punishable under Section 302 read with Section 34 of the I.P.C. While the incident was in progress, they also gave threats to kill to Bai Reshamben and Bai Lilaben and hence they have been rightly convicted of the offence punishable under Section 506 of the I.P.C. In the circumstances, the learned Sessions Judge has also rightly come to the conclusion that it was the appellants who had thrown the dead body of Bai Jasi into a disused well. Hence, their conviction under Section 201 is also justified.

9. The result is that there is no substance in the appeal and the same is dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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